

Message Text

PAGE 01 STATE 201430

43

ORIGIN IO-10

INFO OCT-01 EUR-12 ISO-00 L-03 JUSE-00 DHA-02 SS-15 NSC-05

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EA-09 NEA-10 SCA-01 /094 R

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APPROVED BY IO:ROBLAKE

L/HR:CRUNYON (DRAFT)

JUSTICE:PMILLER (SUBS)

D/HA:RPALMER (SUBS)

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FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK

INFO AMEMBASSY THE HAGUE

AMEMBASSY STOCKHOLM

USMISSION GENEVA

UNCLAS STATE 201430

E.O. 11652: N/A

TAGS: PFOR, UN, SHUM

SUBJECT: 5TH UN CONGRESS ON PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS: SWEDISH-DUTCH DRAFT RESOLUTION

REF: (A) USUN 3644 (B) USUN 3625

1. IN MEETING OF INTERESTED DELEGATES REPORTED REF. A TO
BE HELD LAST WEEK OF AUGUST, USUN SHOULD STATE THE FOLLOW-
ING: DEPARTMENT HAS REVIEWED JOINT SWEDISH-DUTCH DRAFT
RESOLUTION CONTAINING DECLARATION ON TORTURE (TEXT IN REF.
B) WHICH DUTCH AND SWEDES CONTEMPLATE INTRODUCING AT
CONGRESS AND AT GA. OUR INITIAL REACTION IS FAVORABLE TO
NOTION OF SUCH A DECLARATION BUT WE QUESTION WHETHER CON-
GRESS AT GENEVA (NOT TO MENTION GOVERNMENTS AT HOME) WILL
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PAGE 02 STATE 201430

HAVE TIME TO CAREFULLY CONSIDER SPECIFIC TEXT OF DECLARA-
TION AND PASS IT ON TO GA WITH ITS ENDORSEMENT.

2. USUN MAY DRAW ON FOLLOWING ANALYSIS IN DISCUSSION OF

SUBSTANCE OF DRAFT DECLARATION. WE FULLY SUPPORT THE SPIRIT AND PURPOSE OF THE DRAFT, BUT WE HAVE DOUBTS ABOUT SOME OF ITS PROVISIONS; AND WHILE THE DECLARATION DOES NOT CONTAIN BINDING LEGAL COMMITMENTS, COUNTRIES SHOULD NOT SUPPORT IT UNLESS THEY ARE READY TO IMPLEMENT THESE PROVISIONS. THE DECLARATION DOES NOT SEEM TO DISTINGUISH BETWEEN THE ACTS OF PRIVATE PERSONS AND THE CONDUCT OF POLICE OFFICERS OR OTHER PUBLIC OFFICIALS. HOWEVER, FEDERAL AND STATE LAW IN THE US DOES DRAW SUCH DISTINCTIONS IN DEFINING UNLAWFUL CONDUCT AND THE CONSEQUENCES OF SUCH CONDUCT. FOR EXAMPLE, SOME OF THE ACTS DESCRIBED IN THE DECLARATION AS ACTS OF "TORTURE," SUCH AS "DEGRADING TREATMENT," MIGHT BE UNLAWFUL AND IMPROPER WHEN DIRECTED BY A POLICE OFFICER AGAINST A PERSON IN CUSTODY, BUT MIGHT NOT BE UNLAWFUL AT ALL WHEN PRACTICED BETWEEN PRIVATE PERSONS. SIMILARLY, STATEMENTS OBTAINED AS A RESULT OF COERCION OR TRICKERY BY PUBLIC OFFICERS MAY BE INADMISSIBLE IN COURT, BUT MAY BE ADMISSIBLE IF OBTAINED IN THE SAME MANNER BY PRIVATE PERSONS.

3. IN ADDITION TO ABOVE GENERAL OBSERVATIONS THERE ARE SPECIFIC POINTS IN DECLARATION THAT MERIT CAREFUL CONSIDERATION FROM LEGAL AND POLITICAL PERSPECTIVE AND MIGHT WELL BE AMENDED. THESE INCLUDE:

(A) ARTICLE 1: DECLARATION SHOULD BEGIN WITH STATEMENT OF WHAT IS BEING CONDEMNED, I.E., TORTURE. THEREFORE, PRESENT ARTICLE 2 SHOULD REPLACE ARTICLE 1. DEFINITION OF TORTURE SHOULD BE WORDED SO AS TO BE ILLUSTRATIVE, RATHER THAN ALL-INCLUSIVE, AND SHOULD BE PLACED AT THE END OF THE RESOLUTION.

(B) ARTICLE 8: THE NOTION OF PROMPTNESS IN MAKING AN INVESTIGATION SHOULD BE INCORPORATED.

(C) ARTICLE 11: THIS ARTICLE COULD USEFULLY INCLUDE REFERENCE TO THE NEED FOR VERIFICATION OF CLAIMED
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PAGE 03 STATE 201430

TORTURE, OR OTHER INHUMAN TREATMENT OR PUNISHMENT, SO AS TO REMOVE POSSIBLE IMPLICATION THAT UNSUPPORTED ALLEGATION MIGHT BE SUFFICIENT TO RENDER EVIDENCE INADMISSIBLE.
ROBINSON

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